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THE CITY OF NEW YORK
LAW DEPARTMENT

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May 18, 2023

BY ECF

Honorable Katherine H. Parker
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Clark et al v. City of New York,
18 Civ. 2334 (AT)(KHP)

Your Honor:

I represent the defendant in the above-referenced matter. In furtherance of the Court's endorsed order dated May 9, 2023,¹ enclosed please find a Proposed Order for Depositions of Class Members, along with a schedule for the completion of the depositions, for the Court's endorsement. In addition, defendant respectfully requests an additional extension of time from June 8, 2023 until July 21, 2023 to complete the class members' depositions. Defendant provided class counsel with a copy of the proposed Order and Schedule. They indicated, in sum and substance, that they do not believe that the "order we have proposed tracks the Court's Order."

For the sake of brevity, defendant will not repeat the history of what brings us to requiring this Court order. *See* ECF 276. Suffice it to say that, notwithstanding the Court's December 8, 2022 order permitting defendant to depose a subset of 50 (fifty) class members for the purposes of inquiring into "whether there are differences among class members as to what their respective religions permit in terms of removal of head coverings and whether the removal for purposes of taking the police photograph was a 'substantial' as opposed to some lesser burden on their religion," *see* December 8, 2022 Order at ECF 260, to date, **only** three (3)

¹ By order dated May 9th, Your Honor denied, without prejudice, defendant's request to remove any class member who does not participate in discovery from the class. Your Honor further stated that "the parties shall continue to supplement their efforts to contact and depose more absent class members by the June 8, 2023 deadline. If needed, defendant may issue subpoenas or move to compel discovery in accordance with Federal Rule of Civil Procedure 45."

depositions have been conducted.² In light of the fact that the efforts undertaken thus far to depose class members have clearly been unsuccessful, defendant has no choice but to seek a Court order in the form attached.

Defendant proposes this mechanism as it is more efficient than serving forty-seven (47) individual subpoenas. In addition, defendant's research has not provided any clear guidance on whether absent class members are actually parties to a litigation and whether there is, in fact, any preferred method of providing notice to an absent class member.³ Furthermore, Rule 37(b) would provide a similar enforcement mechanism to Rule 45 should any absent class member fail to abide by the proposed court order.

In accordance with the attached Order, once it is signed by Your Honor, a copy of the signed Order will be distributed to the class members, along with a letter from class counsel advising them that failure to comply may result in sanctions. Additional time is needed to allow for the drafting of this letter by class counsel and then for Rust to mail the letter, along with the signed Order, to class members. The schedule proposed herein for the completion of the depositions accounts for these necessary steps and sets the first court ordered class member deposition for May 20, 2023.

Accordingly, defendant now requests that the Court issue an order compelling a subset of mutually selected absent class members to appear for depositions on specified dates and an enlargement of time until July 21, 2023 to complete these depositions. A Proposed Order and deposition schedule are attached to this letter.

² Two additional depositions are scheduled for May 24 and June 1.

³ On or about March 16, 2023, a Notice of Deposition was served on class counsel. Nevertheless, this Notice, along with the additional two notices/letters sent by Rust Consulting, have yielded little to no response from class members.

Thank you for your consideration herein.

Respectfully submitted,

Rachel Seligman Weiss /s

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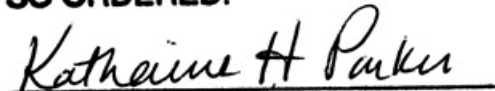
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cc: *All counsel*, by ECF

By **Monday, May 22, 2023**, Plaintiffs shall file a letter stating their position on Defendants' proposed order for depositions, and for an enlargement of time to complete the depositions. To the extent Plaintiffs oppose Defendants' proposed order, Plaintiffs shall offer an alternative proposal that Plaintiffs assert would ensure increased responses from the absent class members.

The parties shall also meet and confer to determine whether they can agree, in the first instance, to any alternative methods for obtaining the necessary discovery from absent class members, such as through online or telephonic questionnaires rather than through depositions.

SO ORDERED:



HON. KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE 5/19/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
Jamilla Clark and Arwa Aziz on Behalf of
Themselves and Others Similarly Situated, and
Turning Point for Women and Families;

Plaintiffs,

-against-

The City of New York,

Defendant.
-----X

**[PROPOSED] ORDER FOR
DEPOSITIONS OF CLASS
MEMBERS**

18 Civ. 2334 (AT)(KHP)

WHEREAS, by Order dated December 8, 2022, the Hon. Katherine H. Parker granted defendant's request to depose fifty (50) class members (hereinafter "the Discovery Order"), *See* ECF 260; and

WHEREAS, on or about March 9, 2023, the Hon. Analisa Torres overruled class counsel's objections pursuant to F.R.C.P. 72 and affirmed the Discovery Order, *See* ECF 273; and

WHEREAS, on or about March 16, 2023, a Notice of Deposition pursuant to F.R.C.P. 30 was served on class counsel; and

WHEREAS, with the assistance of Rust Consulting (hereinafter "Rust"), and using letters drafted by class counsel, notice was sent to fifty (50) randomly selected class members via FedEx requesting that they contact class counsel to have their depositions scheduled (hereinafter "the initial round of notice"); and

WHEREAS, only seven (7) class members responded to the initial round of notice and

only two (2) individuals of the seven (7) were actually deposed;¹ and

WHEREAS, at the expense of the City of New York, Rust Consulting has since expended additional efforts to locate new or updated addresses for those class members who did not respond to the initial round of notice; and

WHEREAS, following Rust's additional efforts, another round of notice was sent to class members via FedEx and tracking information was provided to all counsel (hereinafter "the second round of notice"); and

WHEREAS, class counsel has provided defendant with a list of class members who were sent the second round of notice on or about April 25, 2023; and

WHEREAS, since the second round of notice, however, only two additional depositions have been conducted;² and

WHEREAS, using the list provided by class counsel of the class members who were sent the second round of notice on or about April 25, 2023, defendant created a schedule, annexed hereto, for the completion of the remaining class member depositions; and

WHEREAS, in light of the adjourned June 8, 2023 deadline within which to complete the forty-seven (47) remaining class member depositions and to ensure compliance with the Discovery Order, this Court Order is required; and

IT IS HEREBY ORDERED THAT Rust shall mail a copy of this order, along with the attached schedule of depositions, to each class member on the list;

IT IS FURTHER ORDERED that class counsel shall advise the class members, in a letter to be included with the endorsed order and schedule of depositions, which shall also be

¹ One of these individuals, Vanessa Mohamad, only appeared for half of her deposition. Her deposition has yet to be rescheduled.

² Additional depositions have been scheduled for May 24 and June 1.

sent by Rust, that failure to appear for a scheduled deposition may result in the imposition of sanctions pursuant to F.R.C.P. 37 and/or 41, including, but not limited to, the dismissal, **with prejudice**, of any claims or entitlement to damages that a class member may have;

IT IS FURTHER ORDERED that the Office of the Corporation Counsel shall make the necessary arrangements to depose each class member by remote means on the date and time set forth in the schedule annexed to this Order;

IT IS FURTHER ORDERED that class counsel shall undertake best efforts to confirm, no less than twenty-four hours prior to any given deposition, that a class member will, in fact, appear as scheduled.

Dated: New York, New York
_____, 2023

HON. KATHARINE H. PARKER, U.S.M.J.

1 Hepzibah Allen	May 30 at 9 a.m.
2 Dashawn Austin	May 30 at noon
3 Norine Edgecomb	May 30 at 2:30 p.m.
4 Alize Fontaine	May 30 at 5 p.m.
5 Antonio Frazier	May 31 at 9 a.m.
6 Mariam Konate	May 31 at noon
7 Afia Owusuah	May 31 at 2:30 a.m.
8 Arnecia Richardson	May 31 at 5 p.m.
9 Gina Simpkins	June 6 at 9 a.m.
10 James Dorismond	June 6 at noon
11 Karnail Bath	June 6 at 2:30 p.m.
12 Corina Bhola	June 6 at 5 p.m.
13 Romona Carter	June 7 at 9 a.m.
14 Fally Diallo	June 7 at noon
15 Lagrant Foster	June 7 at 2:30 p.m.
16 Wilmos Friedman	June 7 at 5 p.m.
17 Dov Gefner	June 8 at 9 a.m.
18 Paramjit Gill	June 8 at noon
20 Peter Guernsey III	June 8 at 2:30 p.m.
21 Anthony Haywood	June 8 at 5 p.m.
22 Terrence Herrel	June 13 at 9 a.m.
23 Eurich Hierro	June 13 at noon
24 Shmuel Hockman	June 13 at 2:30 p.m.
25 Sholom Kaye	June 13 at 5 p.m.
26 Tyrone Knowles	June 14 at 9 a.m.
27 Bianca Liadlow	June 14 at noon
28 Curtis McKinstry	June 14 at 2:30 p.m.
30 Rajdeep Pelia	June 14 at 5 p.m.
31 Tricia Plummer	June 15 at 9 a.m.
32 Shawahns Pride	June 15 at noon
33 Aleta Rahman	June 15 at 2:30 p.m.
34 Keyoka Robinson	June 15 at 5 p.m.
35 Yoel Rosenberg	June 20 at 9 a.m.
36 Isaac Schwartz	June 20 at noon
37 Samuel Schwinger	June 20 at 2:30 p.m.
38 Nehoray Shabbot	June 20 at 5 p.m.
39 Fishel Sherman	June 21 at 9 a.m.
40 Rajinder Singh	June 21 at noon
41 Sohanpal Singh	June 21 at 2:30 p.m.
42 Harjinder Singh	June 21 at 5 p.m.
43 Anthony Webb	June 22 at 9 a.m.
44 Essence Wilson	June 22 at noon
45 Kenaz Battle	June 22 at 2:30 p.m.
46 Joel Waldman	June 22 at 5 p.m.
47 Tasmin Budur	June 27 at 9 a.m.
49 Roy Jones	June 27 at noon
50 Torrence Robinson	June 27 at 2:30 p.m.

51 Lakiesha Thomas

June 27 at 5 p.m.

52 Alejandra Vidal

June 28 at 2:30 p.m.